Supreme Court, U.S.
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No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A Minor, By And Through Her Natural Parent Kate Breiner, And DAVID EGELHOFF,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Washington

REPLY BRIEF FOR PETITIONER

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In response to Petitioner's compelling showing that certiorari is warranted here, Respondents raise meritless jurisdictional objections and make a wholly unpersuasive attempt to deny the significance of the widespread circuit conflict acknowledged by the courts below. As Justice O'Connor recognized in granting Petitioner's application for a stay in this case (*see* No. 99A803 (April 7, 2000)), and as the broad base of amicus curiae support for the petition confirms, Respondents' objections are meritless, and certiorari should be granted.

I. Jurisdiction Is Proper In This Case

Respondents assert that "no 'final judgment' has been entered" below because "it remains to be seen" whether the state trial court will comply with the mandate of the Supreme Court of Washington awarding Respondents the ERISA plan benefits at issue here. Opp. 4. Respondents' finality argument is without merit.

The court below squarely and unambiguously held that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." Pet. App. 28a; *see also id.* at 17a ("Respondents . . . are entitled to the proceeds of [the] employment-based life insurance policy."); *id.* at 27a; *id.* at 28a ("Respondents were properly awarded the benefits under their father's pension plan."). As between the parties to this case, therefore, there is nothing more to be decided, and the judgment below is final.

Respondents' assertion to the contrary appears to rest on the mistaken notion that a state appellate court's judgment is not final if it leaves to the state trial court the ministerial task of enforcing the mandate of the appellate court. Respondents misconceive the nature of the finality requirement. The law is clear that a state supreme court's judgment is not deprived of finality merely because the state trial court retains authority to implement the appellate court's mandate. *See, e.g., Duquesne Light Co. v. Barasch,* 488 U.S. 299, 306-07

(1989) (finality requirement satisfied where "all that remains is the straightforward application of [the state appellate court's] clear directive . . . ."); *Pope v. Atlantic Coast Line R.R. Co.*, 345 U.S. 379, 382 (1953) (finality requirement satisfied where "nothing remains to be done but the mechanical entry of judgment by the trial court"); *see generally* R. STERN ET AL., SUPREME COURT PRACTICE § 3.6 (7th ed. 1993).

Respondents hypothesize that Petitioner may "assert further defenses and/or demand a trial" in the trial court (Opp. 4), but their speculation in this regard is baseless. The reality is that Petitioner did not attempt to raise any new issues on remand, nor could she have done so in view of the clarity of the state supreme court's mandate. Respondents offer no specifics to justify their fanciful suggestion that new issues may remain to be litigated below, and for good reason: None exist. The judgment below is final, and Respondents' speculation to the contrary does not change that fact.[1]

Respondents also err in contending that the interpleader action filed by the Boeing pension plan could hypothetically render this case moot. That federal-court action cannot possibly change the state supreme court's

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[1] Even if it were theoretically possible for Petitioner to raise new defenses in the trial court—which it is not—the judgment below would still be final, because Petitioner has no intention of making any such effort. *See* SUPREME COURT PRACTICE § 3.3 at 94 ("finality may be achieved if the parties dismiss or otherwise relinquish the remaining issues that would preclude finality"). Thus, the finality requirement is satisfied here because "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 480 (1975); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907 n.42 (1982).

final ruling in favor of Respondents, which (absent review by this Court) is binding on Petitioner and must be given full faith and credit in the federal courts. *See* 28 U.S.C. § 1738. Moreover, the pension plan's complaint does not (and could not) seek to relieve Petitioner of the binding effects of the judgment below, but instead merely seeks guidance regarding the plan's fiduciary obligations. Lodging, tab A.[2] And in any event, the Boeing pension plan has already made clear its intention not to prosecute the interpleader action. Indeed, the plan filed a notice of voluntary dismissal on January 28, 2000. Lodging, tab B.[3] Thus, Respondents' mootness theory is entirely without merit.

II. This Case Squarely Presents The Issues That Divide The Circuits

Respondents do not challenge Petitioner's showing that the lower state and federal courts are sharply divided over the question whether ERISA preempts state laws that purport to override ERISA beneficiary designations. Pet. 8-19. Respondents nonetheless contend that certiorari should be denied because the first question presented in the petition arises in a variety of factual settings and implicates a number of state laws, including not only statutes like § 11.07.010 but also other state probate laws, divorce laws, community property laws, and common law doctrines. Opp. 5-7.

Far from justifying a denial of certiorari in this case, however, the fact that the question presented implicates

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[2] "Lodging" refers to Petitioner's lodging of district court pleadings with the Clerk for the convenience of the Court.

[3] The district court has not acted upon the plan's voluntary dismissal, presumably because the court stayed all proceedings in the interpleader action pending resolution of Petitioner's bankruptcy. Lodging, tab C.

a number of different state laws and arises in a wide array of factual settings provides a compelling reason for *granting* certiorari, because it demonstrates the widespread significance and recurring nature of the question. The creativity of litigants seeking to evade the effect of ERISA beneficiary designations is virtually limitless, as the cases cited in the petition attest, but at bottom the question in each of these cases is the same: Does ERISA permit state law to nullify beneficiary designations made in accordance with the terms of ERISA plans? That question demands an answer, and this case offers a perfect vehicle for providing one.

Contrary to Respondents' suggestion (Opp. 6), moreover, this case squarely presents the preemption issue at the same "level of generality" as the numerous cases cited in the petition. Virtually *all* of the conflicting authorities describe the fundamental issue in precisely the terms used by Petitioner, *regardless* of which state-law mechanism is being used in an attempt to override an ERISA beneficiary designation.[4]

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[4] *Compare, e.g.*, Pet. App. 25a (§ 11.07.010 "invalidates designation of a former spouse as beneficiary of" an ERISA plan); *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 956 (9th Cir. 1998) (stating question presented as "whether ERISA preemption bars application of state law that would require the distribution of ERISA insurance proceeds to a person other than the designated beneficiary"), *cert. denied*, 525 U.S. 1122 (1999); *with, e.g., Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 15 (2d Cir. 1993) ("[b]ecause the designation of beneficiaries to [a] life insurance policy 'relates to' the ERISA plan, the preemption provision applies") (citation omitted; emphasis eliminated); *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 858, 862 (4th Cir. 1998) ("designating the beneficiary of an ERISA life insurance plan sufficiently relates to a plan to come within the scope of the preemption clause"); *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321, 1325

[Footnote continued on next page]

Respondents argue that "[a]ll but one of the cited cases are properly distinguished" because they involve attempts by private parties to override ERISA plan beneficiary designations. Opp. 7. This proffered distinction is meaningless, however, because in each of the cited cases the party seeking to evade the beneficiary designation was relying on the force of *state law* in an effort to override the terms of the applicable ERISA plan—precisely what Respondents are attempting to do (and what the court below authorized) here.[5]

[Footnote continued from previous page]
(5th Cir. 1994) ("the designation of a beneficiary 'relates to' the provision of an ERISA plan to a sufficient degree to be preempted by that statute"); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) ("the designation of beneficiaries has a connection with or reference to an ERISA plan, thereby preempting state law"); *MacLean v. Ford Motor Co.*, 831 F.2d 723, 728 (7th Cir. 1987) ("When, as here, the terms of an employee pension plan under ERISA provide a valid method for determining the beneficiary, that mechanism cannot be displaced by the provisions of [state law]."); *Equitable Life Assurance Soc'y v. Crysler*, 66 F.3d 944, 948 (8th Cir. 1995) ("ERISA preemption makes the designation of plan beneficiaries and the determination of who is entitled to plan benefits questions of federal law."); *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904, 906 (10th Cir. 1991) ("Because the designation of beneficiaries to this life insurance policy 'relates to' the ERISA plan, the preemption provision applies."); *Brown v. Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991) ("[t]he determination of the beneficiary of the proceeds of an insurance policy plainly relates to an employee benefit plan") (citation omitted).

[5] Respondents also undercount the number of cases striking down statutes like § 11.07.010. *See Brandon*, 18 F.3d at 1323-25 (ERISA preempts Texas statute providing that "a life insurance plan participant must redesignate an ex-spouse

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Significantly, the Secretary of Labor agrees with Petitioner's submission that the judgment below directly conflicts with the authorities cited in the petition. *See* Pet. App. 57a-58a ("[o]ther courts dealing with similar statutes [have] found them preempted by ERISA," citing *Brandon*, *Krishna*, *Hanslip*, *MacLean*, and *Pressley*). Similarly, the court below acknowledged the relevance of the conflicting authorities cited in the petition (Pet. App. 22a & n.97), and relied heavily on the Ninth Circuit's decision in *Emard v. Hughes Aircraft Co.*—a precedent that, under Respondent's view, would have been irrelevant, because it involved the use of state-law principles of constructive trust and community property (rather than a statute identical to § 11.07.010) to override an ERISA beneficiary designation. *See* Pet. App. 18a, 22a, 37a-42a; *Emard*, 153 F.3d at 954-61.

Indeed, in their briefs below, Respondents themselves recognized that this case presents precisely the same legal issue as *Emard*. *See* Resp. Supp. Br. in Wash. Sup. Ct. at 13 (June 30, 1999) ("The Issue Analyzed By The Ninth Circuit In *Emard* Is Identical To The Issue Before This Court"). And *Emard* itself acknowledged that its holding conflicts with and involves the same issue as the circuit court decisions cited by Petitioner. 153 F.3d at 956. Thus, Respondents' attempt to distinguish the cases cited in the petition is refuted by the language and reasoning of those cases, by the Secre-

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after divorce in order to maintain that ex-spouse as the designated beneficiary"); *Hanslip*, 939 F.2d at 906 (ERISA preempts Oklahoma statute that automatically "revoked" beneficiary designation of former spouse upon divorce); *In re MacAnally*, ___ P.2d ___, 2000 WL 328723, at *1, *6 (Colo. Ct. App. Mar. 30, 2000) (ERISA preempts Colorado statute that "revokes any beneficiary designation of a spouse from whom a decedent was divorced at the time of death").

tary of Labor's analysis of the circuit conflict, by the reasoning of the courts below, by the Ninth Circuit's decision in *Emard*, and even by Respondents themselves.

Equally unavailing is Respondents' suggestion (Opp. 8.) that review should be denied because "almost all" of the conflicting authorities pre-date *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995). As demonstrated in the petition, numerous post-*Travelers* decisions reaffirm the common-sense notion that ERISA preempts the use of state laws to override ERISA plan beneficiary designations. *See* Pet. 14-15 (citing *Pettit*, 164 F.3d at 861-65; *Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), 126 F.3d at 809; *Marsh*, 119 F.3d at 420; *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996)); *accord In re MacAnally*, 2000 WL 328723, at *6. Indeed, both *Emard* and the decision below have been expressly rejected in recent cases, further confirming the need for this Court's immediate review. *Pettit*, 164 F.3d at 861-65; *MacAnally*, 2000 WL 328723, at *5. Thus, contrary to Respondents' dismissive characterization (Opp. 9), Circuit Judge Cynthia Holcomb Hall was in fact reflecting the majority view when she explained that *Travelers* is entirely consistent with a finding of ERISA preemption in this context. *Emard*, 153 F.3d at 962 (Hall, J., concurring in part and dissenting in part).[6]

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[6] Respondents' reliance on *Willmar Electric Service, Inc. v. Cooke*, 2000 U.S. App. LEXIS 10695 (10th Cir. May 16, 2000), is misplaced. That case sheds no light on the questions presented here, because it did not involve an effort to use state law to override ERISA plan beneficiary designations. Instead, *Willmar* involved state regulation of apprenticeship training standards, a subject that, unlike the designation of ERISA plan beneficiaries, "is outside the area of ERISA's concerns." *Id.* at *11.

Respondents also err in claiming that review should be denied because the Washington Supreme Court relied on the "fiction" that Petitioner predeceased her former husband. Opp. 9-10. That "fiction" is simply irrelevant, because it does not change the fact that the judgment below applies Washington law to override ERISA beneficiary designations made in accordance with the terms of ERISA plans. Respondents apparently believe that the rights of ERISA beneficiaries can be nullified at will by the simple ruse of promulgating a state law that assumes away the existence of any disfavored beneficiaries, but that assertion is transparently fallacious. And even assuming *arguendo* that this "fiction" gives Respondents an argument against preemption that is absent in some of the cases cited in the petition, that would hardly militate against a grant of certiorari here. To the contrary, it would merely confirm that this case is an ideal vehicle for review, because it presents all aspects of the preemption issue for resolution in a single case.[7]

III. The Decision Below Conflicts With This Court's Precedents

Respondents contend that § 11.07.010 passes muster under ERISA's anti-alienation provision and *Boggs v. Boggs*, 520 U.S. 833 (1997), because the transfer of benefits from Petitioner to Respondents occurred by operation of state law rather than through the voluntary act of an ERISA participant or beneficiary. Opp. 10-11.

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[7] Similarly, as the petition observes without contradiction from Respondents (Pet 16-18 & n.4), this case is a particularly suitable candidate for review because it involves both a welfare benefit plan and a pension plan, thereby permitting this Court to resolve the existing conflict over the scope of ERISA's anti-alienation provision in addition to the more general preemption issue included within the first question presented.

Respondents' construction of the anti-alienation provision would yield odd results, to say the least, because it would prohibit only the voluntary transfer of ERISA plan benefits while permitting all involuntary transfers. In any event, Respondents' argument is incorrect. As *Boggs* itself makes clear, an attempt to use state law to work an involuntary divestiture of ERISA beneficiaries' rights in pension benefits is prohibited by the anti-alienation provision. 520 U.S. at 847, 851-53.

Contrary to Respondents' suggestion (Opp. 11), moreover, Petitioner's entitlement to the pension benefits at issue here is unaffected by the terms of the divorce decree. That decree merely provided that David Egelhoff was entitled to the pension plan proceeds during his lifetime, without mentioning, let alone eliminating, Petitioner's rights as the designated beneficiary of that plan. Pet. App. 3a. And in any event, it is uncontested that the divorce decree is not a "qualified domestic relations order[]" under 29 U.S.C. § 1056(d)(3) (*see* Pet. 16 n.3), so the decree could not have deprived Petitioner of her beneficiary status even if it had purported to do so. *Boggs*, 520 U.S. at 846-47, 851.

Finally, Respondents fail in their attempt to reconcile the decision below with this Court's holding in *Travelers* that ERISA preempts state laws "mandat[ing] employee benefit structures or their administration." 514 U.S. at 658. Respondents assert that § 11.07.010 does not impose meaningful burdens on ERISA plan administrators, but the amicus curiae briefs filed in support of certiorari—by organizations representing literally thousands of ERISA plan sponsors and administrators—persuasively refute Respondents' sanguine assessment. *See* Amicus Br. of The Boeing Co. and the National Ass'n of Mfrs. at 3-8, 10-14; Amicus Br. of American Council of Life Insurers at 7-9. As those briefs demonstrate, the decision below creates an administrative nightmare for ERISA plans by requiring plan administrators to research and interpret countless state laws af-

fecting beneficiary designations, imposing a substantial risk of double liability, and effectively requiring plan administrators to burden the federal courts with huge numbers of interpleader actions. *Id.*; *see also* Pet. App. 50a (Secretary of Labor's brief notes that the preemption analysis upheld below "would subject plans to a multiplicity of regulation varying with each state and prevent the nationally uniform administration of employee benefit plans that ERISA intended").

CONCLUSION

The lower state and federal courts are sharply divided over the questions presented in the petition. Those questions arise with considerable frequency and are of central importance to the efficient and effective administration of employee benefit plans covering millions of Americans. This Court's review is essential in order to provide ERISA plan sponsors, administrators, participants, and beneficiaries, as well as the lower courts, with clear guidance regarding the determination of beneficiaries entitled to receive billions of dollars of ERISA plan benefits. The petition for a writ of certiorari should be granted.

Respectfully submitted.

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